

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 441 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VITHTHALBHAI SOMABHAI CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 441 of 2002
MR SUNIL C PATEL for Petitioner No. 1
MRS HB PUNANI, AGP for Respondents No. 1-3
RULE SERVED BY DS for Respondent No. 2
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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/03/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 15-10-2001 passed by the Police Commissioner, Vadodara City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. He has mainly argued that the detaining authority has relied upon four prohibition cases registered against the petitioner in passing the order of detention and last offence has been registered on 2-9-2001 and order has been passed on 15-10-2002 and hence, there is a delay of 42 days. Second contention raised by him is that the representation dated 4-12-2001 has been decided by the detaining authority after the approval of the detention order by the State Govt. Third contention raised by the learned advocate for the petitioner is that the petitioner has sent a representation to the State Govt. on 4-12-2001 through jail authority and though same is received by the State Govt. it has been decided on 16-12-2001 which has been communicated to the petitioner on 24-12-2001 by the jail authority and therefore according to him, there is a delay in deciding the representation and communicating the same to the petitioner. In this connection, he has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

"The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with

it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. Learned AGP for the State, Mrs.H.B.Punani, has mainly argued that the detaining authority has not decided the representation, but has simply forwarded the same to the higher authority with parawise remarks.

5. On going through the remarks made by the authority it is clear that the detaining authority has not decided the representation but has forwarded the same to the higher authority with his remarks and hence, I am unable to accept the contention raised by the learned advocate for the petitioner on that point. However, since there is a delay in deciding the representation and communicating the same to detenu and also since the said delay has not been satisfactorily explained by the authority, the order of detention is illegal and the same cannot be sustained. Since the petitioner succeeds only on this point, learned advocate for the petitioner does not press other points.

6. The petition is allowed. The impugned order of detention dated 15-10-2001 passed against the detenu is hereby quashed and set aside. The detenu Viththalbhai Somabhai Chauhan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.Dholakia,J.)

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